

RESPONSE TO OFFICE ACTION

A. Specification Objections

The Action objects to the Specification as filed as having an unacceptably large type font. In response, Applicants respectfully traverse, noting that this application was filed electronically, resulting in the font and font size found in the Specification. Further, 37 CFR 1.52(b)(2) only requires that “Text written in a nonscript type font (e.g., Arial, Times Roman, or Courier, *preferably* a font size of 12) lettering style having capital letters which should be at least 0.3175 cm. (0.125 inch) high, but may be no smaller than 0.21 cm. (0.08 inch) high (e.g., a font size of 6)...” (emphasis added). Applicants respectfully submit that as such there is no rule preventing the current font or font size and request that the objection be withdrawn.

B. Status of the Claims

Claims 1-10 are pending and claims 11-20 are withdrawn in view of the restriction requirement mailed June 23, 2006.. Claims 1 and 10 are amended to more clearly claim the Applicants’ invention and to correct minor typographic errors. Support for amendment of claims 1 and 10 is found, for instance, in the application publication at paragraphs 0035; 0036 last sentence; and in paragraph 0042. No new matter has been added. Thus, claims 1-10 are presented for reconsideration.

C. Claims rejection under 35 U.S.C. § 112, second paragraph.

The action asserts that claims 1-10 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for reciting the term “increasing total oil” without stating what the increase would be relative to. In response, Applicants note that claims 1-10 are amended, submit that the rejection is now moot, and respectfully request its withdrawal.

D. Claims rejection under 35 U.S.C. § 102(b)

Claims 1 and 4-10 are rejected under 35 U.S.C. § 102(b) as being anticipated by Lightner *et al.* (U.S. Patent 6,372,965). Applicants respectfully traverse. A careful review of the Lightner reference (*e.g.* Example 7) does not demonstrate that it describes increases in total oil level in plant tissues. Instead, it explicitly describes changes in relative levels of particular fatty acids, for instance increased 18:1 unsaturated fatty acid levels, combined with decreased 18:2 polyunsaturated fatty acid levels or other changes. Applicants draw the Examiner's attention to the headings of Tables 11 and 13-16 in this regard, which state "Relative fatty acid profile" or "Relative fatty acid content". This data is thus understood to be normalized to a value of 100%, and to not indicate an absolute amount of a given fatty acid. Changes in the total fatty acid level are nowhere described. Indeed, in several places in the specification (*e.g.* at column 29, line 65, and column 49, line 28), it is explicitly noted that increased 18:1 content leads to decreased 18:2 content, without describing any effect on total oil content. Again, all data provided in Lightner concerns relative fatty acid content, not total fatty acid content. Thus, Applicants understand Lightner to describe modification of oil composition without demonstrating changes in total oil content, and without a realization that total oil content could be modified as in the present invention. Applicants therefore submit that the Action's assertion (*e.g.* Action, paragraph 9) that Lightner teaches a method of "increasing oil level" (*i.e.* total oil level) in a plant is mistaken. In contrast, claim 1 is directed to a method for increasing total oil level in a seed involving use of a nucleic acid construct, wherein there is "an increase in total oil level in seed relative to an isogenic plant lacking the nucleic acid construct." As such, the reference does not anticipate the claims and withdrawal of the rejection is thus respectfully requested.

E. Claims rejection under 35 U.S.C. § 103(a)

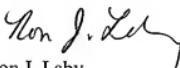
Claims 1-10 are rejected under 35 U.S.C. § 103(a) as being obvious in view of Lightner *et al.* (U.S. Patent 6,372,965). Applicants respectfully traverse, for the reasons noted above, in that Lightner does not teach a method for increasing total oil level in a plant, instead describing changes in relative proportions of various fatty acids, and contains no teachings regarding how one might increase total oil level. The cited art is therefore completely devoid of this element. It is well settled that in order to establish a *prima facie* case of obviousness the prior art must teach or suggest all elements of the claims. As this is not the case here, withdrawal of the rejection is respectfully requested.

F. Conclusion

In view of the above, it is submitted that all of the rejections to the claims have been overcome, and the case is in condition for allowance.

The Examiner is invited to contact the undersigned at (512)536-3131 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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